

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

BETWEEN:

MICHAEL HENDRIKSE
Appellant

AND:

SUE PHOO
First Respondent

AND:

LAW SOCIETY NORTHERN TERRITORY
Second Respondent

REASONS FOR DECISION

1. On 19 February 2009 Mr Michael Hendrikse (the "Complainant") filed a Notice of Appeal with the Disciplinary Tribunal pursuant to section 506 of the *Legal Profession Act (NT)* ("LPA").
2. The Complainant was an "aggrieved person" for the purpose of section 506. He appealed against the decision of the Law Society Northern Territory ("the Law Society") to dismiss his complaint about Ms Sue Phoo ("the Practitioner").
3. Section 506(4) LPA provides that the Notice of Appeal must state the grounds of appeal. The Complainant's grounds were stated thus: "I believe the decision made by the Ethics Committee of the Law Society is not justified given all the evidence and the practices applied by the Practitioner which all go against the best practices the practitioner purports to adhere to."
4. The Complainant had complained to the Law Society on 15 August 2008 about letters addressed to him from the Practitioner dated 22 April 2008 and 13 August 2008. He had a right to complain under section 471(1)(d) which allows a complaint by "any other person". In the complaint form he

expressed his complaint about the letters and the Practitioner's related conduct in these terms: "very rude/without consideration to my personal being; over-bearing; without consideration to other parties; instructing her client to disregard Court orders and generally very threatening in all her correspondence which ... was absolutely not necessary; making accusations without any evidence". In addition, the Complainant asserted that the correspondence was "vexatious" and that the Practitioner had not returned his phone calls.

5. The letters to which the Complainant referred were both written by the Practitioner in the course of acting in a family law dispute concerning the arrangements for the care of children of which the Complainant was the father and the Practitioner's client ("Ms Baird") the mother. Such disputes have a notorious tendency to arouse a high level of emotional activity. That aspect is not at all surprising when one considers that the parents are usually under extreme stress trying to adjust to changes in vitally important family relationships.
6. In her letter dated 22 April 2008 the Practitioner referred to arrangements for collection of goods from Ms Baird's premises and to alleged actions by the Complainant involving contravention of parenting orders. In her letter dated 13 August 2008 the Practitioner referred to various events said by the Practitioner to have raised Ms Baird's concerns regarding the children's safety while in the care of the Complainant. The letter also contained a request for medical and other personal information. It should be noted that the Complainant vehemently disputed the events to which the Practitioner referred in her letters and denied that there was any real risk to the children's safety while in his care. We will return to the contents of the letter of 13 August 2008 shortly.
7. The alleged failure to return phone calls was described by the Complainant in terms that he had rung the Practitioner's office on "numerous" occasions on 15 August 2008. There is conflict (which we do not need to resolve) between the number of calls alleged by the Complainant, on the one hand, and admitted by the Practitioner, on the other hand. The Complainant no

doubt wanted to discuss the arrangements to collect his children having regard to the Practitioner's letter of 13 August 2008.

8. After receiving submissions from both parties, the Ethics Committee of the Law Society considered the complaint at a meeting on 19 January 2009 and delivered a decision on behalf of the Law Society 2 days later. The Law Society decided that pursuant to section 498 LPA it was satisfied that there was "no reasonable likelihood that the Practitioner will be found guilty by the Disciplinary Tribunal of either unsatisfactory professional conduct or professional misconduct".
9. In its reasons the Law Society found that the request for information in the Practitioner's letter dated 13 August 2008 was both proper and within the bounds of the Practitioner's obligations to her client.
10. In his submissions the Complainant asked the Disciplinary Tribunal to consider "the stress of the decision made by Ms Phoo to withhold my children from access" and "on the 13 August 2008 Ms Phoo sent me correspondence... stating that she had in fact instructed her client to withhold my children". The Complainant was referring to this passage in the letter dated 13 August 2008: "In light of the above we have instructed our client to withhold the children until this matter can be heard in Court." It was absolutely clear that, for the purpose of his complaint and this appeal, the Complainant took exception to the Practitioner's conduct in (as it appeared on the face of the letter) "instructing" the children's mother to withhold them from his care.
11. The attention of the Disciplinary Tribunal was directed to the Law Society's Rules of Professional Conduct and Practice, relevantly Rule 26.1 which provides that: "A practitioner must not, in any communication with another person on behalf of a client ... represent to that person that anything is true which the practitioner knows, or reasonably believes, is untrue."
12. We were also informed of the "Best practice guidelines for lawyers doing family law work" prepared by the Family Law Council and in particular guideline 2.7: "Lawyers should be aware that self represented litigants

frequently experience high stress levels, frustration, desperation, anger, fear, anxiety and bitterness. ... This places great demands on the interpersonal skills of the lawyer.”

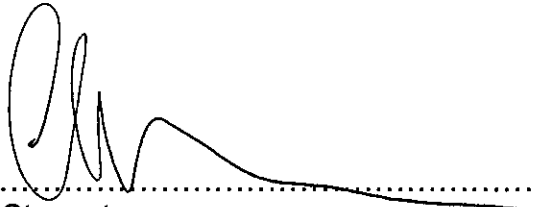
13. We will not explore the rights and wrongs of the allegations against the Complainant made by the Practitioner in the letter dated 13 August 2008. It is sufficient to observe that the allegations caused great distress to the Complainant and he maintains there was no basis in fact nor any justification for making them. We accept, in the absence of evidence to the contrary, that some of the allegations were based on documents from the Child Support Agency while others were based on instructions received from the Practitioner’s client. We also accept that the Practitioner acted reasonably and responsibly when dealing with a self-represented person in difficult circumstances.
14. There is no evidence of any untruth in the Practitioner’s letters apart from the passage referred to in paragraph 9 above. As to this, while we can easily understand the Complainant’s objection to the contents of the letter, the Practitioner has asserted that she has at all times acted upon the instructions of Ms Baird.
15. Regarding the statement in her letter of 13 August 2008 that the Practitioner had instructed Ms Baird to withhold the children, the Practitioner has informed the Disciplinary Tribunal: “This was a drafting error, a mistake on my behalf. It conveys the wrong impression that I was directing my client. This is wrong. At all times I only acted upon the instructions of my client.”
16. The Practitioner’s assurances aside, at least where the parties are not before a Court, the final decision on what action is to be taken will be the client’s not the practitioner’s. Given the documents from the Child Support Agency, even if the Practitioner had “instructed” Ms Baird to withhold the children from access, it is doubtful that there would be serious disciplinary ramifications for the Practitioner. That said, we are prepared to accept the Practitioner’s explanation. It is consistent with the usual arrangement where the client instructs the legal practitioner and not vice-versa. There is

no evidence to weigh against the Practitioner's explanation. But her careless drafting blemish had unfortunate consequences because it led to the Complainant developing a misconception which in turn undoubtedly contributed to his complaint to the Law Society and eventually this present appeal.

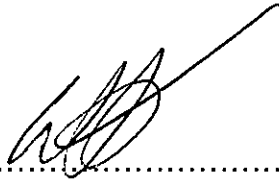
17. It is unfortunate also that, when the complaint was being considered by the Law Society, the Practitioner did not explain her mistake. We do not allocate blame in that regard but an explanation at that point in time may have served to make the Law Society's decision more acceptable to the Complainant. It was obvious from the Complainant's presentation at the hearing of the appeal that he found the Practitioner's letter of 13 August 2008 very upsetting.
18. We accept that the Complainant was distressed by the Practitioner's perceived failure to respond to his attempts to contact her by telephone on 15 August 2008. We can easily sympathize with him. We also find that eventually the Practitioner spoke to him later that same day. It is tempting to support the Law Society's comment in its decision that "given the contents of the practitioner's correspondence to the complainant on 13 August 2008 threatening an urgent application and the withholding of contact, it would have been prudent for the practitioner to return the call immediately she became aware of the telephone messages". However, that comment is in the nature of a counsel of perfection; the evidence doesn't enable us to go that far. We are unable to find that there was any failure on the part of the practitioner in this respect let alone a failure of such magnitude as would warrant an adverse finding against the Practitioner.
19. In the end we are not satisfied that the Practitioner's conduct whether by reference to her letters of 22 April 2008 and 13 August 2008 or otherwise would justify a finding of unsatisfactory professional conduct or professional misconduct. The Law Society's decision to dismiss the complaint is affirmed.

20. We will hear the parties in the event of an application for costs.

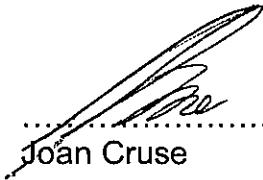
Dated: 9 FEBRUARY 2010



John Stewart
Chairperson



David Farquhar



Joan Cruse